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No. 91-22

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In the Supreme Court of the United States

OCTOBER TERM, 1991

JAMES J. BELCHER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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Petitioner contends that the court of appeals erred in reversing the dismissal of the indictment against him; he argues that the indictment fails to charge a criminal offense.

1. On February 23, 1989, petitioner was indicted by a grand jury sitting in the United States District Court for the Southern District of Florida. He was charged in four counts with causing a domestic financial institution to file currency transaction reports (CTRs) containing material omissions or misstatements of fact, in violation of 31 U.S.C. 5324(2); in four counts with using material omissions or misstatements to cause a domestic financial institution to file incom-

plete and false CTRs, in violation of 18 U.S.C. 1001; and in four counts with structuring currency transactions for the purpose of evading reporting requirements, in violation of 5324(3).

On October 20, 1989, the district court dismissed the indictment on the ground that it failed to charge a criminal offense. The court held that 31 U.S.C. 5313 imposes reporting requirements only on financial institutions, and does not require customers to structure their transactions so as to trigger the reporting requirements. Pet. App. 13a-15a.

The court of appeals reversed. Pet. App. 1a-12a. The court noted that, contrary to the district court's assumption, petitioner was not charged with the failure to file, or filing, false CTRs. Rather, he was charged with causing a financial institution to file false CTRs. *Id.* at 4a n.7. Addressing the issue whether that allegation charges a criminal offense, the court held that Section 5313 and its implementing regulations impose a duty on financial institutions to disclose the real party in interest in reportable currency transactions; that the indictment charges that petitioner deliberately concealed the source of his funds and caused the banks to file false CTRs; and that, if the allegations of the indictment are established, petitioner would be subject to criminal liability on each count of the indictment. *Id.* at 5a-12a.

2. Petitioner contends (Pet. 7-8) that the Bank Secrecy Act, 31 U.S.C. 5313-5326, and the applicable regulations do not proscribe the conduct charged in the indictment. Whatever the merits of petitioner's contention, it is not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to

dismiss. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

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* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the court requests.

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